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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,613	11/10/2003	Yoshio Tomoda	03679/LH	4678

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EXAMINER

TRAN LIEN, THUY

ART UNIT PAPER NUMBER

1761

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/705,613

Applicant(s)

TOMODA ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 6-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 6-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 9, lines 8-11 are indefinite because it is not known the range of phosphate encompassed by the language " small amount " recited in the claim.

Claims 1,3,7,8,9,10,11,13,15,16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al.

Miller et al disclose a method of preparing dry instant noodles. The process comprises the steps of kneading a mixture of raw materials containing a cereal flour, shaping the dough into noodles, steaming the noodles and drying the noodles. They teach coating the noodles prior to drying with additional ingredients to enhance the flavor, appearance or texture of the noodles. Coatings can be applied by spraying, immersing, brushing onto the noodles. These ingredients add flavoring or nutritional value, impart a certain texture or simply extend storage life. The ingredients include acids. Example 1 disclose a typical dough for instant noodles; the dough includes additive such as sodium carbonate, sodium phosphate and potassium carbonate. (see col. 3 lines 52-60, col. 7 lines 53-65, examples 1-2)

Miller et al do not disclose frying the noodles.

Miller et al recognize that frying is an alternative to drying in making instant noodles. It would have been obvious to one skilled in the art to fry the noodles when the texture provided by the frying is wanted and fat/calorie reduction is not a concern. As to the pH and the reduction in acrylamide, it is obvious the Miller et al noodles

possess such properties because Miller et al teach applying acidic solution to the noodles and the noodles also contain the same additives as claimed. As to the small amount of phosphate, it is unclear what amount of phosphate is encompassed by such language. Thus, any amount meets the claimed limitation because it is not known what the range is.

Claims 6,12,13,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al in view of Yamasaki et al (5543168).

Miller et al do not disclose the specific acids as claimed.

Yamasaki et al disclose a process for producing noodles. They teach to treat the noodles with acid solution including such acids as lactic acid, citric acid, malic acid and vinegar. (see col. 4 lines 24-26)

it would have been obvious to one skilled in the art to use edible acids that are applicable to noodles such as the acids disclosed by Yamasaki et al. Miller et al do not limit the process to specific acids.

In the response filed 11/3/05, applicant argues that it is a common sense in the technology that one skilled in the art would not willingly apply an acid to noodles. This argument is not persuasive because it is unsupported. The partial translation of the article does not discuss noodles. Furthermore, whether it is common sense or not is beside the point because the reference explicitly teaches applying acids to noodles. Applicant argues Miller et al list many other kinds of components other than acid. While Miller et al do list other components, they also disclose acids; thus, coating with acids is within the teaching of Miller et al. The examples do not need to list all the embodiments

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of the reference. The main point is Miller et al clearly disclose coating with acids. With respect to the Yamasaki et al reference, applicant argues they disclose fresh noodles, not fried noodles. The Yamasaki et al reference is only relied upon for teaching of the type of acids that one can use. It would have been obvious to one skilled in the art to use any known edible acid; one would be motivated to used the acids disclosed by Yamasaki et al because they teach to use the acids in connection with noodles. As to the decreasing of acrylamide, it is obvious the Miller et al noodles will have such property because acidic solution is applied to the noodles.

Applicant's arguments filed 11/3/05 have been fully considered but they are not persuasive.

The change in the rejection is necessitated by amendment.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 10, 2006


LIEN TRAN
PRIMARY EXAMINER
